

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TALLEN MARCE' FLEMING, JR.,

Plaintiff,

v.

Case Number 09-11795

Honorable David M. Lawson

Magistrate Judge Paul J. Komives

STATE OF MICHIGAN,

Defendant.

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**ORDER ADOPTING REPORT AND RECOMMENDATION AND  
DISMISSING THE PLAINTIFF'S COMPLAINT**

Presently before the Court is the report issued on February 23, 2010 by Magistrate Judge Paul J. Komives pursuant to 28 U.S.C. § 636(b). Judge Komives determined that the Eleventh Amendment bars the plaintiff's present claims against the State of Michigan. As a result, he recommended that this Court grant the defendant's motion to dismiss to the extent that it seeks a dismissal under Federal Rule of 12(b)(6). Judge Komives recommended dismissing as moot the defendant's motion for more definite statement and motion to dismiss the plaintiff's amended statement of claim, and denying the plaintiff's motions for summary judgment, for a temporary restraining order, and for a more definite statement.

Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, no objections have been filed. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases

the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the Magistrate Judge.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation [dkt # 32] is **ADOPTED**.

It is further **ORDERED** that the defendant's motion to dismiss [dkt. # 3] is **GRANTED IN PART** to the extent the defendant seeks dismissal under Federal Rule of Civil Procedure 12(b)(6).

It is further **ORDERED** that the defendant's motion for a more definite statement [dkt. # 3] and motion to dismiss the plaintiff's amended statement of claim [dkt # 25] are **DISMISSED AS MOOT**.

It is further **ORDERED** that the plaintiff's motions for summary judgment [dkt # 10], for a temporary restraining order [dkt # 21], and for a more definite statement [dkt # 26] are **DENIED**.

It is further **ORDERED** that the plaintiff's complaint is **DISMISSED**.

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge

Dated: March 11, 2010

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 11, 2010.

s/Teresa Scott-Feijoo  
TERESA SCOTT-FEIJOO